IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 11433 of 2007(J)

PETITIONER:

FR.GEORGE EDAKALATHUR, VICAR,
ST.ANTONY'S FORANCE CHURCH,
MALAGAYUDE PANTHAL, OLLUR,
THRISSUR DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENTS:
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1. THE REVENUE DIVISIONAL OFFICER,
THRISSUR.

2. THE TAHASILDAR,
THRISSUR TALUK, THRISSUR.

BY G.P. SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER OF 2ND RESPONDENT DT.5.10.2005.

P2: .DO. 1ST RESPONDENT DT.4.5.2006.

P3: .DO. 2ND RESPONDENT DT.19.3.2007.

P4: TRUE COPY OF ORDER OF ASSESSMENT ISSUED BY 2ND RESPONDENT DT.19.3.2007.

P5: TRUE COPY OF APPEAL FILED BY PETITIONER BEFORE R1 DT.27.3.2007.

P6: TRUE COPY OF ORDER PASSED BY 1ST RESPONDENT DT.29.3.2007.

P7: TRUE COPY OF DETAILS OF BOOKINGS OF THE HALL FOR OTHER PURPOSES AND THE DONATION RECEIVED THEREOF IS PRODUCED HEREWITH FROM THE ACCOUNTS MAINTAINED BY THE CHURCH FOR THE PERIOD FROM 1.4.2006 TO 31.3.2007.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.11433 of 2007

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Dated this the 17th day of September, 2007.

JUDGMENT

The petitioner is challenging Exts.P3 and P4 orders of assessment and demand of building tax in respect of a building constructed by the church. The finding in Ext.P3 is that building is let out on rent by the petitioner. However, when petitioner denied findings on collection of rent and claimed use of the building exclusively for religious purpose, this court vide order dated 1.6.2007 directed the petitioner to assert the claim through an affidavit with a rider that if false affidavit is filed, petitioner will be made to pay for the consequence. After passing of this order, petitioner has filed an affidavit wherein there is no denial of letting out of the building by the petitioner. On the other hand, petitioner has taken certain legal objection against this court demanding assertion of facts through an affidavit. In the first place, I find no bonafides in the affidavit and the purpose is only to get exemption under cover of religion. The building is neither part of the church building nor is the place used for prayers or residence of priests. In large number of cases this court has held that church buildings, chappels, prayer halls, convents etc. only are eligible for building tax exemption

because only buildings principally used for religious purpose are entitled to exemption under that account. It is the position reiterated by this court in large number of cases that what is relevant for exemption is not ownership of the building, but the use of the building for charitable or religious purpose. This position laid out in MEDICAL TRUST HOSPITAL V. STATE OF KERLA 2004(2) KLT 139 is upheld by the Division Bench. In other words, even if the church owns the building in question, it is not entitled to exemption from building tax if it is let out for holding marriage reception and other purposes as found by the respondents which is not denied by the petitioner in terms of direction contained in this court's order dated 1.6.2007. In the absence of an affidavit denying the finding by second respondent in Ext.P3, this court has to assume that the building is let out on rent for marriage and other purposes. It is very common that marriage halls are constructed and maintained by churches, temples etc. and in all such cases disallowance of exemption by Government is confirmed by this court. I find no exception in petitioner's case and going by the consistent view of the Government confirmed by this court in large number of cases, a building though owned by religious institution attracts tax if it is let out because there is no religious activity in letting out of a building for holding marriage receptions. The claim of the petitioner that income from

letting out is used for religious and charitable purpose is not sufficient in order to entitle the building for exemption is the position held in the above decision, confirmed by Division Bench. In the circumstances, W.P. is devoid of any merit and is dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms